BEYOND THE INDUSTRIAL FRAGMENTS

Jobsback, the Coalition's new industrial relations policy, has unions bracing themselves for the next election. But the labour movement may not be the only loser. John Buchanan argues that Jobsback's flawed conception of the jobs market means it is highly unlikely to achieve what it intends.

Industrial relations is now a major point of conflict in the struggle between the ALP and the Federal Coalition leading up to the next federal election. The debate is not about the issues of the 1970s—'excessive union power' and strikes, political levies and pickets. Rather, it concerns the nature and structure of our industrial relations system. Should bargaining be individual or collective? Should unions be organised on a company or multi-employer basis? Is there a role for industrial tribunals in maintaining minimum conditions?

The Federal opposition's Fightback! manifesto committed the Coalition to recasting key elements of Australia's social, political and economic life. Jobsback, the Coalition's new industrial relations policy released in October, commits the opposition to the most extensive restructuring of the labour market and the industrial system since the introduction of compulsory arbitration nearly a century ago. Here I want to assess the conceptual and empirical underpinnings of Jobsback. I argue that if implemented Jobsback would further fragment the labour market thereby exacerbating current inefficiencies and inequalities. Labour market reform is sorely needed, but the changes should enhance not dismantle mechanisms of coordination within the industrial relations system.

The social philosophy underpinning both Fightback! and Jobsback is economic liberalism. Jobsback begins by assuming a strict dichotomy between the individual and social institutions: "The Coalition believes that our future lies not with industrial institutions or systems but the working men and women of Australia." Throughout the document it is assumed that competition in freely operating markets will result in maximum social and economic welfare. The market for labour is assumed to be no different to any other. Competition between individuals in the labour markets is the key to improved economic performance. The rigorous application of this principle means that only agreements between individuals will be recognised at law in the new system. These individual contracts, misleadingly called 'workplace agreements', will be enforceable as common law contracts of employment. Unions will be allowed to exist but anyone else may be selected by an employee to bargain on their behalf.

Jobsback is not simply an old-fashioned conservative assault on the trade union movement. Rather, it represents a very distinctive attempt to make unions irrelevant. For instance, where both employers and workers agree, a workplace can remain covered by the award system. Either party, however, can opt out of the award system.

Jobsback assumes that the award system will slowly wither away. A number of 'inducements' have been included in the policy to encourage this outcome. These include the establishment of a new 'Office of the Employee Advocate'. The Advocate will have authority and resources to pursue complaints arising from non-compliance with 'workplace agreements' free of charge to individual employees. The pursuit of individual grievances has traditionally been regarded as one of the core functions of a union. Jobsback also promises minimum standards for 'workplace agreement' employees: a minimum hourly rate of pay linked to awards and limited recreational, sick and maternity leave. There will be a limitation on the amount of damages that can be awarded against 'workplace agreement' employees who take industrial action—but there will be no such limits on the liability of workers staying within the award system. Where an employer elects to leave the arbitration system, his or her workers will no longer have access to it. Under these conditions their employment conditions will be those prevailing in their awards at the time they are deemed to leave the
In keeping with its rigorous commitment to individual choice, Jobsback clearly envisages the operation of multiple bargaining units at the workplace. Workers will be entitled to join industry, occupational or enterprise unions or have some other agent bargain on their behalf. Employers will be obliged to deal with any bona fide agent nominated by an employee. Employers could, therefore, also be faced with a plethora of regulatory systems operating at the workplace. This prescription is obviously at variance with union policy of promoting unions along industry lines. It is also at variance with the Business Council of Australia's policy of reducing the number of bargaining units at the workplace.

Finally, Jobsback also contains an extensive range of new penalties and sanctions. It is assumed throughout that the common law will play a greater role in regulating industrial relations. Traditionally the common law has never been kind to unions. And sanctions within the awards system will be increased—including deregistration for any union that commences 'flow ons' or comparative wage justice campaigns, increased sanctions for industrial action and proposals for new 'essential services' legislation. Employers and employees will be penalised if strike pay is agreed to. These proposals will see industrial tribunals weakened, undermine union organising strategies and nurture individual contracts of employment. Jobsback assumes these changes will result in significant efficiency gains.

However, quite aside from their palatability or otherwise to union members, Jobsback’s reform proposals also suffer from a number of conceptual and empirical problems. The central assumption underpinning the policy is that of equal bargaining power between employers and workers. The inadequacies of this assumption have long been recognised. Workers—especially the unskilled and those from minority groups—often have little choice as to which job to take. Labour law has emerged as a special part of the legal system to redress some of this inequality. The Coalition assumes that because unions and employers receive special legal rights, capacities and obligations under Australian law that they are abnormally privileged. They assert that such a situation represents an aberration from the “ordinary law of the land”. Yet marriages and divorces, for exam-
Perpetuating myths about our industrial relations system only serves to distract attention from the critical issues facing Australian workplaces.

People, are not regulated by contract law. Equally companies are regulated on the basis of special principles that bequeath large organisations corporate status and limit the liability of directors in the event of business failure. Both family and company law developed because of the inadequacies of common law. Australian labour law developed for similar reasons.

The economic arguments informing Jobstback are also questionable. The major weaknesses of the competitive model derive from its assumption that the labour market is the same as any other. Generations of industrial relations and labour market researchers have questioned the validity of this assumption. Labour is not a tangible commodity—what is traded is a worker's ability to work, not the market itself. The nature of economic and market service cannot be analysed in the same way as trade in tangible commodities such as second-hand cars or antique clocks.

Labour supply is primarily determined by demographic factors and social customs —the changing role of women and young people in the workforce are examples of this. Labour demand is primarily determined by anticipated demand for output. The price of labour is primarily determined by notions of acceptable living standards. Conditions of supply and demand have some influence, but they are not the critical factors determining pay rates. Consequently, while in theory adjustment in the labour market can involve either changes in wages or employment, most change occurs in employment levels.

If the labour market is to be properly understood, different concepts from the abstractions of economic liberalism are needed. Far from being a potential clustering of harmony and order, arising from free choices made by isolated individuals, the labour market is in fact highly structured and fragmented. Different segments of the workforce do not compete with others for jobs. Instead the workforce is divided into a myriad of groups on the basis of industry, upon firm/enterprise and occupation. The precise nature of segmentation in any one sector of the economy varies on the basis of production technology, industrial structure and factors such as degree of competition and extent of monopolisation, as well as the outcome of strategies pursued by employers, employees and unions.

Jobstback's prescriptions for the labour market ignore these essential dynamics. From the point of view of equity they would enhance the position of those with considerable power in the labour market and deny the weak access to the resources of either collective organisation or state intervention necessary to redress the power imbalance. More significantly, by failing to grasp how labour markets actually work, reforms motivated by a commitment to an individual bargaining system would intensify the tendency of the labour market to segment. Reliance on 'the market' for coordinating labour supply and demand would leave employers with little choice other than to nurture a core of skilled workers needed for production and draw on unskilled workers as demand fluctuates. The resulting fragmentation of the labour market would have detrimental implications for both efficiency and equity.

It is now recognised that successful modern economies require mechanisms in addition to the market to coordinate economic activity. This applies as much to the Japanese economy where such coordination is informal as to the more openly regulated, multi-employer bargaining systems in countries like Germany. Such coordination does not require state control and ownership of the means of production. The vital formula for success appears to involve concerted action among various social agents. The critical policy issue is to identify and nurture appropriate social structures that can assist in delivering negotiated outcomes at national level, yet allow flexibility at the local level. Industrial relations institutions potentially have a very important role to play in this regard.

Given our recent experiences in national, industry level and workplace bargaining, Australia is currently well placed to develop innovative coordinating mechanisms. On the basis of recent experience, for example, it would seem possible that general wage movements could be regulated by national wage cases involving governments, peak level union and employer representatives. Training arrangements and many employment conditions are probably better regulated on an industry, occupational and/or regional basis. Bargaining at such levels has occurred in many industries, especially over matters associated with award restructuring. Issues such as the span of working hours, on-the-job training arrangements and allocation of overtime are probably best handled at enterprise or workplace level with local union representative reaching agreement with workplace managers. While coordination of this kind already occurs in the industrial relations system much of it has evolved in an ad hoc manner. The challenge is to creatively reform our current labour market institutions, not dismantle them.

This raises important questions for all parties in the industrial relations system. For employers one critical issue is to reconsider the role of their representative associations. For example, German employer organisations play a central role in the running of that countries extensive training system. It is this coordination that has been so important in labour market flexibility in Germany. Equally there are major challenges for enterprise-level management. General managers need to consider how to coordinate their affairs with other firms in their industry. They also need to consider how much autonomy they give workplace managers. Striking an appropriate balance between reliance on external labour markets and internal ones is difficult. The doctrinaire promotion of individual and enterprise-based systems closes off consideration of this vital issue.

There are equally as many challenges for unions.
They have already begun to reduce their number through amalgamations and to restructure their coverage along industry lines. This is a complex and difficult process, one that few other labour movements in the world have even attempted. These initiatives, however, need to be complemented by changes in the support provided by the unions to their workplace delegates. Without well-resourced, well-trained and legally protected workplace representatives, the union movement will become very vulnerable as more matters are settled at workplace and enterprise level.

Public authorities will also have to reconsider their function if they are to assist in establishing a better coordinated system. The Industrial Relations Commission has already commenced this process with its review of union and award structures. Its preparedness to register enterprise appendices to multi-employer awards is indicative of its ability and inclination to create linkages between different elements of the system. Government agencies also need to consider their function. As more issues are subject to at least some bargaining at workplace and enterprise level there is likely to be an increasing demand for information on what is occurring in other establishments. Equally, government training authorities have an important complementary role to play and many are already dramatically restructuring their affairs to provide greater support.

As in the depression of the 1890s the nature of relations between employers and employees is again firmly on the agenda. The Coalition has clearly established that it is now committed to the total recasting of these relations by promoting a fully fledged system of individual contracts of employment and “white anting” the current award system and unions. Yet, contrary to the implicit assumption of Jobsback, the labour market is not like a commodity market. If industrial relations reform is to contribute to economic and social development it is essential that industrial relations policies are framed on the basis of an understanding of its dynamics. Without non-market coordinating institutions the labour market has a spontaneous tendency to fragment. Reforms directed at promoting individual and enterprise bargaining ignore this point. The critical issue in industrial relations reform is not to increase fragmentation but to develop more dynamic and responsive mechanisms of coordination.

JOHN BUCHANAN is deputy director of the Australian Centre for Industrial Relations Research and Teaching (ACIRRT) at the University of Sydney. He was previously director of policy research in the Commonwealth Department of Industrial Relations. This article is based on a more extensive analysis of Fightback! in the June 1992 issue of the Economic and Labour Relations Review.